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Attorneys for Plaintiff
CTS Wholesale, Inc

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

CTS WHOLESALE, INC.,
An Oregon corporation,
Plaintiff,

v.

CREATIVE EYEWEAR, INC.,
a New York corporation,

Defendant.

CIVIL NO. 8V '11 1020 PK

**COMPLAINT;
EXHIBITS 1 and 2
LANHAM ACT
(15 U.S.C. §1125(a); 15 U.S.C. 1114(b);
ORS 646.608)**

DEMAND FOR JURY TRIAL

CTS Wholesale, complains and alleges as follows:

JURISDICTION AND VENUE

1.

This is an action for unfair trade practices and false advertising under the Lanham Act, 15 U.S.C. §1051 et seq., and the Unfair Trade Practices Act, ORS 646.605 et seq.

2.

This Court has federal question jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 and 28 U.S.C. §1338.

1 -COMPLAINT

#42280

3.

Venue in this district is proper under 28 U.S.C. §1391(b).

PARTIES

4.

Plaintiff CTS Wholesale, Inc. (“CTS”) is an Oregon corporation with a principal place of business in Salem, Oregon.

5.

On information and belief Defendant Creative Eyewear, Inc. (“CEI” or “Defendant”) is a New York corporation with a principal place of business in Queens, New York, doing business nationwide.

GENERAL ALLEGATIONS

6.

CTS offers sunglasses and eyewear for sale throughout the United States.

7.

A primary business for Plaintiff CTS is the sale of sunglasses branded with the distinctive registered Trademark XSPORTZ, Registration No. 3,576,735. (Exhibit 1, XSPORTZ Trademark Registration.)

8.

Defendant is a business competitor of CTS, also offering sunglasses for sale throughout the United States.

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9.

Both CTS and Defendant participate in the same trade shows, both offering their goods to the same customers.

10.

Defendant markets sunglasses under the XSPORTS name. (Exhibit 2, CEI Web Site.)

11.

The Defendant brand XSPORTS is confusingly similar to CTS's registered XSPORTZ brand.

12.

CTS customers are often confused and misled, believing Defendant's XSPORTS products are actually CTS's XSPORTZ products.

13.

CTS has requested Defendant refrain from using the confusingly similar XSPORTS mark on competing products and Defendant has refused to comply or acknowledge CTS's rights.

14.

On information and belief, CTS has lost sales and suffered injury to goodwill due to Defendant's use of the confusingly similar and misleading XSPORTS mark.

15.

On information and belief, Defendants will continue to engage in the sale of products marketed with a confusingly similar and misleading brand name to the injury of CTS.

FIRST CLAIM
15 U.S.C. §1125(a)

16.

CTS realleges each allegation above.

17.

CTS hereby asserts a claim against Defendant for injunctive and monetary relief pursuant to Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a), with regard to Defendant's sale of goods with a false or misleading designation of origin and a false or misleading association and affiliation.

SECOND CLAIM
15 U.S.C. §1114(b)

18.

CTS realleges each allegation above.

19.

CTS hereby asserts a claim against Defendant for injunctive and monetary relief pursuant to 15 U.S.C. §1114(b) with respect to Defendant's infringement of the registered mark.

THIRD CLAIM
(State Claim - ORS 646.608)

20.

CTS realleges each allegation above.

21.

Defendant engages in unlawful business practices within the State of Oregon, marketing and selling product to Oregon consumers in violation of Oregon law in one or more of the following ways:

- a. Defendant's conduct causes likelihood of confusion or of misunderstanding as to the source, approval, or certification of goods. ORS 646.608(b),
- b. Defendant's conduct causes likelihood of confusion or of misunderstanding as to affiliation, connection, or certification by, another. ORS 646.608(c).
- c. Defendant represents that goods have approval, characteristics, or qualities that they do not have. ORS 646.608(e).
- d. Defendant engages in unfair or deceptive conduct in trade or commerce. ORS 646.608(u).

22.

Pursuant to ORS 646.638, Plaintiff has a private cause of action against Defendant for any violation of ORS 646.608.

23.

Pursuant to ORS 646.638(1), Plaintiff may recover actual or statutory damages, punitive damages and any other equitable relief the court deems proper.

24.

Pursuant to ORS 646.638(3) the Plaintiff may recover reasonable attorney fees.

Prayer for Relief

Plaintiff, CTS, respectfully requests of this Court:

Under its Federal Claims:

- a. to enjoin Defendant and its agents from false and misleading representations regarding its products;
- b. award CTS statutory and compensatory damages pursuant to 15 U.S.C. §1117;
- c. order the disgorgement of all Defendant's profits related to Defendant's misconduct pursuant to 15 U.S.C. §1117(a)(1).
- d. award CTS increased and treble damages for willful conduct pursuant to 15 U.S.C. §1117(b);
- e. award CTS attorney fees and costs pursuant to 15 U.S.C. §1117(a)(3); and
- f. award CTS any other relief appropriate under the circumstances.

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Under its State Claim:

- a. To enjoin Defendant from false and misleading representations regarding its products;
- b. award CTS statutory damages pursuant to ORS 646.638(1);
- c. award CTS compensatory damages pursuant to ORS 646.638(1);
- d. award CTS punitive damages for willful conduct pursuant to ORS 646.638(1);
- e. award CTS costs and attorney fees pursuant to ORS 646.638(3); and
- f. award CTS any other relief appropriate under the circumstances.

DATED: August 22, 2011, Salem, Oregon.

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